

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:03CR290
)	
v.)	
)	
STERLING McKOY,)	MEMORANDUM OPINION
)	
Defendant.)	
)	

This matter is before the Court on defendant's motion to reopen motion to vacate 28 U.S.C. § 2255, as to resolve the substance of constitutional claims set forth therein that still remain unadjudicated pursuant to Fed.R.Civ.P. 60(b) (4), and motion to amend or clarify those unadjudicated 2255 claims pursuant to Fed.R.Civ.P. 15(c) (Filing No. 416). Defendant's motion seeks to reopen the § 2255 motion which he filed on June 8, 2007. That motion was considered and denied in this Court's memorandum opinion of August 8, 2007 (Filing No. 355). On October 5, 2007, the defendant filed a motion to reconsider the denial of his § 2255 petition which the Court denied. On October 10, 2007, the defendant filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit, and on June 18, 2008, defendant's application for certificate of appealability was denied and his appeal was dismissed.

On November 21, 2008, he filed a petition for certiorari with the Supreme Court of the United States, and that petition was denied on February 25, 2009. More than a year later, on May 6, 2010, the present motion was filed.

Rule 60(b)(4) of the Federal Rules of Civil Procedure provides that the Court may, on just terms, relieve a party from a final judgment if the judgment is void. However, no showing has been made that the final judgment in this case was void. It was premised on a jury verdict finding the defendant guilty of conspiracy with others to distribute or possess with intent to distribute cocaine base.

Rule 15(c) of the Rules of Civil procedure provides for the relation back of amendments to pleadings, and simply is not applicable to defendant's present motion.

After review of defendant's motion, the Court finds it should be denied in its entirety. After review, the Court further finds that no certificate of appealability should be issued. A separate order will be entered in accordance with this memorandum opinion.

DATED this 24th day of May, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court